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IN THE
Supreme Court of the United States

OCTOBER TERM, 1950.

No. 461

IN THE MATTER OF

**FEDERAL FACILITIES REALTY TRUST, A COMMON
LAW TRUST, AND NATIONAL REALTY TRUST, A
COMMON LAW TRUST,**

Debtors.

**STACY C. MOSSER, SUCCESSOR TRUSTEE OF NATIONAL
REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST AND
JOHN W. GUILD, INDENTURE TRUSTEE, ETC.,**

Petitioners,

vs.

**PAUL E. DARROW, FORMER TRUSTEE OF NATIONAL REALTY
TRUST AND FEDERAL FACILITIES REALTY TRUST,**

Respondent.

**REPLY OF PETITIONER JOHN W. GUILD, AS SUC-
CESSOR INDENTURE TRUSTEE, TO THE BRIEF
OF PAUL E. DARROW, FORMER TRUSTEE OF
DEBTORS.**

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W. Guild, Indenture Trustee.*



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STATEMENT OF FACTS.

Point II of Respondent Darrow's brief is an attack upon the status of this Petitioner, and he desires to file a sepa-

rate reply thereto. This Petitioner has examined the motion for substitution of Messrs. Schwartz and Whiston, as Successor Trustees of the Debtor's Estates, and begs leave to join in their motion for substitution. This Petitioner has also examined the reply brief of his co-petitioners to the brief of Respondent Darrow, and in the interests of brevity, and to conserve the time of this court, adopts said reply brief and begs leave to join therein.

The "Summary Statement of the Matter Involved" contained in the Petition for Certiorari is an accurate statement of the essential matters involved herein and need not be repeated. Said Statement is in no wise slanted to suit the contention of the Petitioners, nor is there any omission in reference to any important or significant facts as alleged by the Respondent. However, certain additional facts relevant to the status of the Indenture Trustee should now be properly brought to the attention of this court.

The Respondent contends that Petitioner Guild, Indenture Trustee, is without authority or standing to present a petition for certiorari in that he is not a "party" within the provisions of the United States Code concerning petitions for certiorari in this court. After default on the Federal Facilities bonds outstanding under the trust indenture, it became the duty of Guild, as Indenture Trustee, to actively represent the bondholders. The Indenture Trustee was a party to the reorganization proceedings of the Debtor, Federal Facilities Realty Trust, from the inception of said proceedings. He was the pledgee, as trustee, of all of the capital stock of all of the fourteen subsidiary corporations of Federal and participated actively in the reorganization of all of said subsidiaries. He filed a claim on behalf of the bondholders secured by his trust indenture. Upon the filing of Respondent Darrow's final accounts in National and Federal, said causes were consolidated for the purpose of hearing of objections filed to said

accounts and the Indenture Trustee filed objections and actively participated in the hearing on said objections. (Record 505, 510.) As a result of the evidence presented at said hearings, the surcharge, now before this court, was imposed. In Respondent's appeal to the Circuit Court of Appeals, the Respondent named the Indenture Trustee as an appellee (Record 1, 585 and 587), and he participated in said appeal as an appellee and cross appellant. (Record 594.) The cross appeal was not passed upon by the Circuit Court of Appeals because the matters involved therein were reserved by the District Court for further consideration. (Record 675 at page 691.) The case of Federal Facilities Trust and the case of National Realty Trust were heard as a consolidated case by the Court of Appeals and is now being brought to this court as a consolidated case, to which the Indenture Trustee is a proper party before this court. There is no statement or expression in the opinion of the Circuit Court of Appeals which would in any manner indicate that it was of the opinion that the Indenture Trustee was not a proper party.

ARGUMENT.

Rule 48 of the Supreme Court of the United States, dealing with joint or several appeals or petitions for Writs of Certiorari, expressly provides:

"Parties interested jointly, severally, or otherwise, in a judgment may join in an appeal or a petition for Writs of Certiorari therefrom; or, without Summons and severance, any one or more of them may appeal or petition separately, or any two or more of them may join in an appeal or petition."

Section 206 of Chapter X of the Bankruptcy Act (11 U. S. C. A., Sec. 606) provides as follows:

"The Debtor, the Indenture Trustees, and any creditors or stockholder of the Debtor shall have the right to be heard on all matters arising in a proceedings under this Chapter."

Had it been intended by the Act or any provision of the United States Code that the creditors of a Debtor were to be represented and protected solely by the Bankruptcy Trustee then it is quite evident that Indenture Trustees would not have been specifically named and included in Section 206.

Section 206 of the Bankruptcy Act has been held to give the parties designated therein absolute right to be heard on all matters arising in the proceedings, and this right includes and carries with it the right to appeal. *Keystone Realty Holding Co.*, 117 Fed. 2nd, 1003; *Dana, et al. v. Securities and Exchange Commission, et al.*, 125 Fed. 2nd, 547; *Young v. Higbee*, 324 U. S. 204, 210-213.

Furthermore, it seems strange and improper for Respondent to assert in his brief first that the Bankruptcy Trustee is not a proper party to file a petition for Cer-

tiorari, and then, in the same document, to assert that the Indenture Trustee is not a proper party because he and his indenture beneficiaries are represented by the Bankruptcy Trustee. Such a contradictory argument suggests that the Respondent is attempting, by specious argument, to prevent anyone from presenting the merits of the matter to this court.

Failure to sustain the surcharge against Respondent will diminish the trust assets to which the bondholders must look for payment. The Indenture Trustee, therefore, has a vital and important interest in these proceedings. This fact coupled with right given to him under Section 206 and the law giving those parties a right to be heard and a further right to appeal clearly gives the Indenture Trustee the right to maintain his petition in this court.

Conclusion.

Upon the Record in this case, the cases herein cited, the Section of the Bankruptcy Act herein cited, and Rule 48 of the Supreme Court of the United States, it is quite evident that Petitioner, as Indenture Trustee, had the right to be heard in the District Court, had the right to appeal from the order of the District Court which, in the opinion of this Petitioner, adversely affected the rights of the beneficiaries of his Trust, and is rightfully a proper party to file a Petition for the issuance of a Writ of Certiorari.

Petitioner respectfully submits that the Petition for Writ of Certiorari is proper and brought by proper parties; and that the Writ of Certiorari should issue.

Respectfully submitted,

JACOB B. COURSHON,

*Counsel for Petitioner, John W. Guild,
Successor Indenture Trustee.*